U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California and the Administrative Appeals Office (AAO) affirmed the denial on appeal. The applicant, through counsel, now moves to reconsider the application. The motion to reconsider will be granted, but the decisions of the district director and AAO will be affirmed.

The applicant is a native and citizen of Chile who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The AAO dismissed the appeal, having found the district director's decision to be correct.

8 C.F.R. § 103.5(a) states in pertinent part:

> (a) Motions to reopen or reconsider
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> . . . .
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> (3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel contends that the AAO erred as a matter of law in affirming the director's determination. Counsel asserts that the AAO failed to properly consider and analyze the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. Counsel maintains that the applicant established that his wife would suffer extreme hardship if he were removed. Counsel does not provide any new facts or evidence, but she cites seven Board of Immigration Appeals (BIA) cases which she asserts are analogous to the instant facts, and based on which the instant waiver application should be granted. The application will be reconsidered in light of the cases proposed by counsel as precedent and controlling decisions.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant procured admission to the United States in 1989 by using a passport from El Salvador with a valid visa issued in another individual's name. He is married to a U.S. citizen and has one approximately four-year-old U.S. citizen child. The applicant's wife has five children from former relationships who do not reside in the United States.

A § 212(i) waiver of the bar to admission resulting from a violation of § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself or his child experiences upon deportation is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

On motion, counsel reiterates her position that, whether the applicant's wife remains in the United States or accompanies the applicant to Chile, she will suffer extreme financial and emotional hardship. The AAO notes that all seven of the decisions counsel cites on motion in support of her assertion in this regard are factually distinguishable from the instant case. Counsel provides very brief summaries of the cases cited, but fails to describe how they are similar to the case at hand. Merely underlining phrases taken from or referring to the cited decisions does not explain how such diverse factual and procedural situations resemble the case at hand, or how they support a reversal of the prior decisions in this case.

A review of all the evidence on the record indicates that the district director and the AAO correctly applied precedent decisions. The AAO recognizes that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS,* 809 f.2d 1419, 1423 (9th Cir. 1987) *citing Bastidas v. INS,* 609 F.2d 101 (3rd Cir. 1979). However, it is also noted that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. It is acknowldeged that the applicant's wife would endure hardship as a result of separation from the applicant. Nevertheless, her situation is typical to

individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The motion to reconsider is granted, but a review of the record does not reveal that the previous decisions were incorrect. Thus, the decisions of the district director and the AAO will be affirmed.

ORDER: The motion is granted, and the decisions of the District Director and the AAO are affirmed.